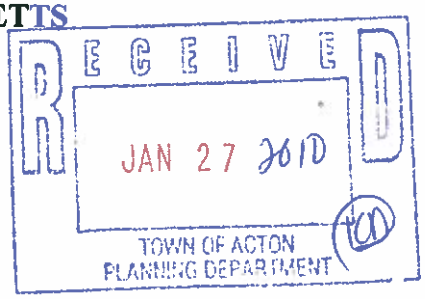
TOWN OF ACTON, MASSACHUSETTS
PLANNING BOARD



IN RE:
SBA TOWERS II, LLC'S APPLICATION FOR A WIRELESS COMMUNICATION FACILITY SPECIAL PERMIT

OPPOSITION TO APPLICATION FOR SPECIAL PERMIT

MAY IT PLEASE THE BOARD:

The undersigned, Richard E. Jussaume, Jr., 8 Russell Road, Acton, opposes the Application for Special Permit requested by SBA Towers II, LLC on the following grounds:

I) THE SPECIAL PERMIT FOR THE CELL TOWER SHOULD BE DENIED BECAUSE A CELL TOWER IS NOT AN ACCESSORY USE TO A WAREHOUSE AND THE LOT'S PRINCIPAL USE IS AS A WAREHOUSE

Acton's Zoning Bylaw provides for a "principal use" and "accessory uses" on a given Lot. The terms "Principal Use", "Accessory Use" and "Lot" are defined by the Bylaw. § 1.3.20 defines "Principal Use" as "the main or primary use of any land or Lot." §1.3.19 defines "Accessory Use" as "any use which is incidental **AND** subordinate to a principal use" (emphasis added). Lot is defined in §1.3.12 as "an area of land, undivided by any street, in one ownership, with definitive boundaries ascertainable from the most recently recorded deed...." This definition is the town's codification of the Common Law "merger doctrine" which holds that "adjacent lots in common ownership will normally be treated as a single lot for zoning purposes" Preston v. Bd. Of Appeals of Hull, 744 N.E. 2d 1126 (Mass. App. Ct. 1999). Even before the advent of zoning laws, where

contiguous parcels were conveyed to the same person as separate parcels, the whole tract constituted one "lot". Orr v. Fuller, 172 Mass 597, 600 (1899).

The significance of the foregoing is that the properties located at 5 and 7 Craig Road are in common ownership and have been since December 2, 1992. The deeds attached hereto as Exhibit "A" show that the two lots (upon which one the Cell Tower is proposed to be built) are both owned by Leonard N. Palmer and Craig D. Palmer d/b/a Palmer Realty Company. Therefore, according to both the Acton Bylaw and the law of this Commonwealth, the two lots are to be treated as one for zoning purposes.

There is already a use for this one lot. It is, and has been since at least 1984, the site of a moving and storage company warehouse. This Principal Use is a specific principal use set out under the Acton Zoning Bylaw. See §3.6.1. For the Cell Tower to be placed on the same Lot, it would need to meet the definition of Accessory Use. This it cannot do.

Accessory Use is specifically defined and to meet the definition the proposed accessory use compound definition to wit: the accessory use must be (1) incidental to the principal use AND (2) subordinate to the principal use. It should go without saying that a cellular phone tower has nothing whatsoever with the moving, storage and warehousing of furniture or goods. However, this Board is not without guidance in this regard. The word "incidental" means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. Henry v. Board of Appeals of Dunstable, 418 Mass. 841 (1994). Further, the incidental use must be one that is somehow functionally

related to the principal use. Gallagher v. Board of Appeals of Acton, 44 Mass. App. Ct. 906 (Mass. App. Ct. 1997). The accessory use must have a reasonable relationship to the primary use, it must also be attendant or concomitant. Id. See also Town of Harvard v. Maxant, 360 Mass. 432 (Mass 1971). At the risk of repetition: a Cell Tower has no conceivable relation to a warehouse.

It may be argued that §3.10 somehow allows for multiple principal uses on a single lot. However, a careful reading provides no support for such an argument. Indeed, except in the cases of cellular facilities attached to buildings or structures, these is no provision indicating anything other than that a stand alone tower must be on a conforming lot of land as would any other structure. This is so even though the Bylaw specifically states that among its purposes is to "establish requirements for...placement." §3.10.1.3. While §3.10.3.13 essentially indicates that a PWFS may be located on a "LOT", it does not indicate that it is derogating the definition of Principal Use and Secondary Use. It does not provide that in the case of cell towers there may be multiple "primary uses" of a single lot. The slightly enlarged definitions of PWFS in §3.10.3.13 merely allows a cell tower to be located on a LOT as already defined, or by a new "LOT" which need not be combined into single ownership at the Registry of Deeds but rather can be done simply by contract effectively creating a single conforming lot (presumably so that the lots are not in future commingled in the event the cell tower should be reomoved).

On the contrary, §3.10.7 states that "nothing contained in this Section 3.10 shall, or is intended to, waive, restrict, modify, or limit any other Bylaws of the

Town of Acton, or any rule or regulation made thereunder." There is no indication anywhere within §3.10 indicating that a cell tower does not need to be on a conforming piece of property. There is no allowance for placing a cell tower on an undersized LOT. Interestingly, §3.10.4.6 provides a waiver of parking standards of the Acton Zoning Bylaw for Wireless Communication Facilities. The significance in this provision is that it demonstrates that the Town considered which of its Zoning Laws to waive in terms of Cell Towers and chose specifically to waive that one. The Town could just as easily have made provisions that Cell Towers could be located on property with existing principal uses, or that they may be sited on lots that do not conform to lot dimensional requirements, but it did not do so. Therefore, the Application should be denied since the facility cannot be legally placed on a lot that is already developed with an existing principal use.

Finally, it is of no avail for the current owners to try to convey out 5 Craig Road. As can readily be seen from the Deed to that property, the lot has only 125 feet of frontage. It also contains less than the required 80,000 square feet of area required.

Neither does the argument that the 5 Craig Road Lot existed on paper and is therefore grandfathered from frontage and area requirements avail. The section dealing with such non-conforming lots is set forth in MGL 40A §6. By its own terms it applies only to certain residential properties. "The purpose of that clause is to alleviate the hardship that zoning amendments can cause to small residential owners. It is restricted to the small, one and two-family home owners; it is not available to apartment house owners, *much less to commercial and industrial*

owners." Chamseddine v. Zoning Bd. of App. Taunton, 873 N.E.2d 1197, 70 Mass. App. Ct. 305 (Mass. App., 2007)(emphasis added)

In light of the foregoing, and since the locus of the proposed cell tower is on a single lot already with a principal use, the cell tower cannot be built in the proposed location unless the two properties can somehow be subdivided so as to provide the cell tower locus with a conforming lot. Since that has not been done, the application should be denied.

II) THE CELL TOWER MAY NOT BE CONSTRUCTED BECAUSE THE SITE IS OUT OF COMPLIANCE WITH AN EXISTING SPECIAL PERMIT AND ITS SPECIAL PERMIT HAS BEEN REVOKED

On June 20, 1984, 7 Craig Road was granted a special permit under a site development plan for the conduct of certain warehousing business. (See Exhibit "B") As pointed out above, in 1992, 5 Craig Road became, for all intents and purposes, part of 7 Craig Road. The site plan approval required that the owner of the property "shall submit annually (on the anniversary of this decision) an affidavit [stating that certain conditions had been met)" A review of the file for 7 Craig Road reveals that there has NEVER been submitted even one such affidavit.

The permit contains an immediate efficacy clause that states that "failure of the petitioner to comply with this requirement SHALL constitute and immediate and complete revocation of this Site Plan Special Permit".

Since no affidavits have been filed, ever, the property in question has not had an approved site plan or special permit since June of 1985. As a result, the owners should be required to obtain a new site plan approval and special permit for the

existing business before the Town should even consider allowing any further development (which is pointless in any event as pointed out above.)

III) THE APPLICATION SHOULD BE DENIED BECAUSE THE APPLICANT HAS NOT DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT A SIGNIFICANT GAP EXISTS IN ACTON

According to §3.10.6.17(b) of Acton's Zoning Bylaw, the applicant has the burden of demonstrating, by clear and convincing evidence, that a significant coverage gap (as opposed to a small dead spot) exists in its network.

Clear and convincing evidence has a particular meaning that this Board is bound to apply. This burden has been stated "The burden (of persuasion) is not a burden of convincing you that the facts which are asserted are certainly true or that they are almost certainly true, or are true beyond a reasonable doubt. It is, however, greater than a burden of convincing you that the facts are more probably true than false. The burden imposed is to convince you that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." Callahan v. Westinghouse Broadcasting Co., Inc., 363 N.E.2d 240 (Mass., 1977)

There appear to be two companies that wish to utilize the proposed cell tower; (1) Clearwire and (2) T-Mobile. The submissions on behalf of SBA Towers II, LLC, however, sustains the burden of proof for neither. The definition of "Significant Gap" contained in 3.10.3.16 is only three sentences but covers 18 lines of text making it very difficult to read. However if one splits up the section into constituent parts it becomes a little easier.

Splitting the section up renders a reading as follows:

A Coverage Gap in a Carrier's ... network ... shall be considered to be a Significant Gap if such specific identified geographic area is

(a) so large in physical size and/or

(b) affects ~~or is predicted to affect~~ such a large number of remote users of Compatible User Service Devices

as to fairly and reasonably be considered "significant" as opposed to merely being a small "dead spot".

In determining whether or not a ... Gap is significant,

(a) a relatively small or modest geographic area may be considered a "Significant Gap" if

(i) such geographic area is densely populated or
(ii) is frequently used by a large number of persons for active recreational ~~or similar~~ purposes who are, ~~or are predicted to be~~, remote users of Compatible User Service Devices,
(iii) and/or such geographic area straddles one or more public highways or commuter rail lines regularly traveled, ~~or predicted to be traveled~~ by remote users of Compatible User Service Devices,

(b) ~~while~~ a larger geographic area may be considered not to be a "Significant Gap" if such geographic area does not straddle any public highways or rail lines and/or is sparsely populated.

(c) Whether or not a Significant Gap exists is to be determined separately for each Carrier's Personal Wireless Services network, regardless of whether or not any other Carrier(s) have Service Coverage in such geographic area.

As set forth in the final sentence of the section, the determination of whether a "Significant Gap" exists must be determined separately for each of T-Mobile and Clearwire. To begin with, the determination must be proved for each by clear and convincing evidence. The only evidence supporting the existence of a "Significant Gap" is contained in two affidavits of Radio Frequency Engineers; one for each of Clearwire and T-Mobile. The burden is on the proponent of expert testimony to demonstrate its reliability, not on the opposing party to refute it. Palandjian v. Foster, 842 N.E.2d 916, n. 17, (Mass., 2006) Consequently, the applicant has the burden of showing by clear and convincing evidence that their experts' affidavits are reliable. They cannot do this

because their expert affidavits are simply recitations of conclusions without underlying data.

These affidavits should show that the gap is either (1) so large an area geographically that it is reasonably seen as significant as opposed to a small dead spot or (2) that it affects such a large number of device users that it is reasonably seen as significant as opposed to a small dead spot; or (3) both. We may now examine the proof of each of T-Mobile and Clearwire to determine if that have clearly and convincingly demonstrated a "Significant Gap".

(a) T-Mobile

In aid of its Affidavit T-Mobile's expert provides two maps showing coverage as existing and as proposed. T-Mobile does not provide a map overlaying the proposed improvement over existing conditions. The undersigned, however, went through the effort of putting the improved map over the existing map on top of a light box and tracing the improved areas on the "existing" map. Going through this exercise show that the vast majority of geographical area that would be "improved" consists of (1) soccer fields, (2) roadways; (3) farm fields; (4) the Acton Water District bordering wetlands and (5) a few streets. To prevail, however, T-Mobile must show by clear and convincing evidence that the dead spots are significant as opposed to merely small dead spots. This juxtaposition in the statue means that the gap must be relatively large. In other words, the Bylaw requires one to view the dead spot in relation to potential users and the way in which those users utilize the devices. For example, "In Building" coverage is not conceivably significant along Route 2 since there are only a handful of buildings in the proposed improved area

while motor vehicle users would be many. Similarly, in building coverage cannot be significant in soccer fields, wetlands or farm fields since there are no buildings there.

(i) In-Vehicle Coverage

In terms of In-Vehicle coverage it is clear that the current coverage is adequate for the purposes of the Bylaw. Keeping in mind that the Bylaw differentiates between significance and small dead spots it is obvious that the proposed improvement, for "in-vehicle coverage" would remedy only small dead spots.

Along Route 2 T-Mobile's map shows that it already has in-vehicle coverage along the entirety shown except for 2 places where coverage does not exist each being only 1/16 of a mile. At 5280 feet to a mile, these two places amount to dead spots for in vehicle coverage of a mere 330 feet. Using the formula *Time = Distance ÷ Speed,* these dead spots, assuming a traveling speed of 45 mph, amount to a whopping 5 seconds each. These "dead spots" are the very definition of "insignificant".

Of the remaining areas where there is currently no T-Mobile in-vehicle coverage these areas amount to (1) a ¼ mile section of school street; (2) a ¼ mile section of Parker Street; (3) the ¼ mile circle of Lexington; (4) the ¼ mile circle of Heritage Road (5) a 1/8 mile radius at the corner of School Street and Hosmer; and (6) a less than ½ mile radius around the neighborhood containing Alcott Street and Phelan Street. T-Mobile did not provide the Board with a map showing all the dead spots it has in Acton, however as can bee seen from the top right hand corner of the "existing coverage" map, there are far larger areas of non-coverage than these minor distances. Thus, at least as to "in vehicle coverage" the areas of improvement can be fairly said to address only small dead spots.

T-Mobile has produced no traffic surveys or other evidence showing how many users traverse these minor areas and at what speeds and how long these users might be without service. T-Mobile has produced no complaints from its customers on these streets claiming that they cannot get coverage. In sum, T-Mobile has merely produced a bald assertion by its engineer that these gaps exist and are significant, as if by reciting magic words, without any support that these areas are anything other than small dead spots. T-Mobile has not met its burden.

(ii) In-Building Coverage

T-Mobile's map showing "In Building" coverage seems to show a significant improvement if one is impressed by large blotches of green. However, the test for determining whether there is a gap depends upon a showing of effect on "so large" an area or "such a large number of remote users". Again, T-Mobile's submission fails to carry the burden.

In terms of "such a large number of remote users", the phrase connotes more than just "many" or "quite a few". The construction of the phrase clearly contemplates "such a large number" rather than just "a large number". As relates to the whole of Acton, the number that would be helped, even potentially, seems minor indeed. According to the census of 2000, there were 20,331 people, 7,495 households, and 5,540 families residing in the town. The population density was 1,018.1 per square mile (393.1/km²). There were 7,680 housing units at an average density of 384.6 per square mile (148.5/km²). *http://en.wikipedia.org/wiki/Acton,_Massachusetts*.

Looking at T-Mobile's map of existing conditions demonstrates that the improved area would cover, after subtracting the soccer fields, farm fields, transfer station,

wetlands and so forth, an area of probably less than ½ square miles. Even accounting for the dense development at Lexington Street, the number of people who would potentially be served would be relatively small. Assuming double the density described in the census for this ½ square mile area, the number of people, for this purported "significant gap amounts to 384.6 or 1.89%. Even a cursory review of the existing conditions map shows that, as to "In Building coverage", the notion that the proposed Cell Tower will address a significant gap is ludicrous. By T-Mobile's position, virtually ALL OF ACTON is a "significant gap".

T-Mobile must produce studies showing the number of potential users of its services who use them within buildings. It has not done so. The raw numbers of users of its services within buildings in the proposed area is just as likely to be small as it is to be large. This is particularly the case where in building users are far more likely to use land lines than Cell Phones. The same analysis holds for any argument that the area is "So large".

(iii) T-Mobile Conclusion

T-Mobile must show by clear and convincing evidence that it has a significant gap. The mere say so and printing of fancy maps does not constitute clear and convincing evidence. Consequently, T-Mobile should be deemed to have failed of its burden.

(b) Clearwire

The submission by Clearwire is even less impressive than T-Mobile's. Clearwire's expert claims that without the proposed Tower there "would be" a significant gap in its coverage in Acton. The assertion is stupefying.

Clearwire does not have ANY network in Acton. Clearwire does not have ANY network in Massachusetts. Clearwire does not have ANY Network in New England. See Clearwire Coverage Map shown at Exhibit "C". According to a Reuters news story of January 7, 2010 (see Exhibit "D"), Clearwire apparently does not even plan to be offering a network in Massachusetts in 2010. ("Its 2010 expansion plan is to cover markets with 120 million people, including San Francisco, New York and Washington, D.C.") Clearwire cannot clearly and convincingly demonstrate that the proposed Tower addresses a "coverage gap" because it does not have a network to have a gap in.

§3.10.3.4 defines coverage gap and refers to an existing network to compare the gap – "is highly likely to be unable to reliably connect to and communicate with the Carrier's Personal Wireless Services Network" . §3.10.3.4 does not make provision for a future network, or a speculative network. And indeed, this view comports with Acton's Bylaw bias "to promote shared USE of facilities to reduce the need for new facilities." §3.10.1.5. Allowing Clearwire to arbitrarily pick a spot and then claim that the spot is necessary for its future network to cover a gap, when the particular spot would be the ONLY tower (this can be seen from Clearwire's misleading map which shows future sites as if they exist), would turn the purposes of the Bylaw on its head.

Clearwire should, in conformity with the purposes of the Bylaw, be required to co-locate on existing facilities and only after having done so should the determination of what gaps may then exist be addressed.

IV) THE APPLICATION SHOULD BE DENIED BECAUSE THE APPLICANT HAS NOT DEMONSTRATED THAT FOR TECHNICAL OR PHYSICAL REASONS ITS FACILITY CANNOT BE LOCATED ON AN EXISTING WIRELESS COMMUNICATION FACILITY OR TOWER

Pursuant to §3.10.6.17(d) of the Bylaw, the Special Permit may only be granted if the Board finds that the proposed facility cannot for technical or physical reasons be located on a n existing facility that would be expected to provide **comparable** coverage. The Bylaw does not mandate that the other facilities must provide the same coverage to the same areas; it merely requires that existing facilities be able to provide "comparable" coverage. This comparable coverage might include a similar number or users, even if in a different geographic area. The coverage need only be comparable.

The submissions by T-Mobile and Clearwire conveniently leave off their maps an existing Tower in Concord. This facility is shown on the attached map readily available on the Internet and is located on Annursac Conservation Land. (See Exhibit "E") This existing Cell Tower is located less than 1 ½ mile from the proposed site and presumably would cover much of Great Road, Comerford Road, Stoneymeade Way, Pope Road, Braebrook Road as well as the Alcott Street and Phelan Street areas shown on the Map and Route 2. This area is at least as large a Gap both vehicle-wise and population-wise as the proposed Tower.

The submissions also fail to mention the numerous radio towers on the north side of Route 2. Now, it may be that these towers are not suitable for "piggybacking" wireless communications facilites or it may be that they are. The answer to that question is, however immaterial insofar as SBA Towers II, LLC has not addressed

them. SBA Towers II, LLC has not indicated that there are technical or physical reasons[1] why these cannot be used. Indeed, SBA Towers II, LLC has given no indication whatsoever that they even looked into this possibility. According to the Town's Bylaws, the site of those radio towers is as amenable (i.e. SPP required) as is the proposed site.

In any event, the omission of any analysis of the Annursac site or the radio towers site, and the failure to provide any indication of the coverages these sites might provide along with any evidence of the technical or practical availability of these sites is a fatal flaw in the application. Since SBA Towers II, LLC has not seen fit to analyze the benefits of these alternate location it has not demonstrated that for technical or physical reasons the facility cannot be located elsewhere. Therefore, the Board should be constrained to determine that it cannot find that for technical or physical reasons the proposed facilities cannot be located elsewhere on existing facilities.

V) THE APPLICATION SHOULD BE DENIED BECAUSE THE APPLICANT HAS NOT DEMONSTRATED THAT OTHER LESS OBJECTIONABLE SITES ARE NOT PRACTICALLY AVAILABLE

Pursuant to §3.10.6.17(e) of the Bylaw, the Special Permit may only be granted if the Board finds that the proposed facility cannot be located at any other practically available site that is less objectionable…" That section puts the burden of demonstrating the unavailability of other sites squarely upon the applicant. The Board should be constrained to find that the Applicant has not met this burden because the Applicant has

[1] Note that the Bylaw does not provide for financial reasons, only technical or physical reasons. The Town is under no obligation to allow Towers on the grounds that they will cost less here rather than there. The people of Acton should not have to subsidize profit by overlooking their own laws so that a corporation can make more money putting a tower in one location rather than another location that may be more costly.

provided no evidence of what other sites it looked at and why these were not practically available. It is significant to note that §3.10.6.17(e) provides a two pronged requirement for satisfaction of the burden. The Applicant must demonstrate BOTH what other sites and technologies it considered AND why such other sites and technologies are not practically available.

The ONLY evidence the Applicant has provided is contained in the Affidavit of its Site Acquisition Expert. The Affidavit is insufficient because it is merely conclusory (i.e. regurgitates magic words) and does not set forth any specifics as to which other sites were considered AND why those particular sites were practically unavailable.

So for example within a ½ mile radius of the proposed sites are lands owned by the Commonwealth and the Town of Acton. The applicant has not shown that it looked into seeking permission to locate its tower near the Acton Well., or on the Commonwealth's land. Going a little farther, the Applicant has not shown that it looked into placing its tower on the Adesa property or the Commonwealth land at the corner of Rt 2 and Hosmer. Neither did the applicant show that it looked into Placing its tower in the LI district along River Road, or the LI-1 District. Each of these areas may have provided a suitable, less objectionable location. However, the applicant has not given the Board even a scintilla of evidence that it considered these sites OR that they were not practically available; never mind both.

Consequently, the Board should be constrained to find that the Applicant has not met its burden and that it cannot give its Mandatory Finding in conformance with §3.10.6.17(e)

VI) IN THE EVENT THE BOARD APPROVES THE SPECIAL PERMIT, IT SHOULD REQUIRE THE TOWER TO BE A "CAM" AND

REQUIRE THE APPLICANT TO PLACE MATURE 25 FOOT TALL SCREENING TREES AROUND THE PERIMTER OF THE L1 DISTRICT IN ANY PLACE WHERE THE TOWER WOULD BE VISBLE TO RESIDENTS

If the Board should find even considering all the foregoing, it must grant the Special Permit, then the Permit should only be granted for a CAM structure. The Bylaw specifically requires the use of CAM structures and this may only be varied "when aesthetic considerations are less important". §3.10.6.4.

Recently a Balloon Test was done showing the height of the proposed Tower. The Applicant claims that a monopole is appropriate because there are no aesthetic concerns. The undersigned takes particular umbrage at this.

This past summer, I spent a very large sum on money to create a landscaped garden that was specifically designed to screen the industrial building behind my home. This was the entire purpose behind investing this money on my property. Aesthetic considerations are thus very important to me.

We designed the garden in such a way that trees would grow up along the property line to a certain height that would obscure the building next door. Now, before this garden has even had a chance to grown one season, the Applicant wants to put up an undisguised cell tower covered in antennae that will be visible from every point on my property.

When the Balloon Test was done, I took pictures. These pictures are attached as Exhibit "F". As can be seen, this Tower will be visible from my bedroom, my office room, my living room, my yard, and my brand new new garden. It is incredibly frustrating to think that the time, effort and expense put into creating a showplace garden that would be isolated from the Industrial Buildings will now

be put to naught because someone is going to put up a Tower that I cannot screen within the next 50 years.

The screening that the applicant proposes is preposterous. Twenty Five foot trees around the base of a 170 foot tall cell tower simply are not going to screen it from my view. The aesthetics of me, my family, my neighbors and guests are, apparently, unimportant to SBA Towers, LLC. This is despite my specific and documented efforts to improve just that.

Therefore, if the Board is inclined to grant the Permit, the Board should also require that SBA Towers II, LLC back my hemlock trees with another line of MATURE trees of 25 feet height. SBA Towers II, LLC will have to get permission from the Owner of the backing building to do this. As pointed out above, it is not the Town's or my obligation, to subsidize the cell tower. If they must place a Tower in this place and it is given a special permit, then they should be required to compensate for the very real frustration of the neighboring resident's aesthetics.

Respectfully,

_____

Richard E. Jussaume, Jr.
8 Russell Road
Acton, MA 01720

January 27, 2010

A

B 22683 P 082

MASSACHUSETTS QUITCLAIM DEED SHORT FORM (INDIVIDUAL) 881

I, Peter Shribman, Trustee of Dan Nikk Realty Trust u/d/t dated December 16, 1986, recorded with Middlesex South District Registry of Deeds at Book 17683, Page 508

of Swampscott, Essex County, Massachusetts,

for consideration paid, and in full consideration of ($60,000.00)

---------Sixty thousand and No/100 Dollars---------

grant to Leonard N. Palmer and Craig D. Palmer, d/b/a Palmer Realty Company *

of Craig Road, Acton, Middlesex County. with quitclaim covenants

[Description and encumbrances, if any]

See deacription attached.

PROPERTY ADDRESS: Lot 4A, Craig Road, Acton, MA

MID 12/02/92 08:59:56 001 25.00

0000 MASS. EXCISE TAX 136.00 000

Witness my hand and seal this 2nd day of December, 19 92

Dan Nikk Realty Trust

By: [signature] trustee

Peter Shribman, Trustee

The Commonwealth of Massachusetts

ss. December 2 1992

Then personally appeared the above named Peter Shribman, Trustee of Dan Nikk Realty Trust as aforesaid and acknowledged the foregoing instrument to be his free act and deed before me

[signature]

Notary Public — Justice of the Peace

My commission expires 7-29 1999

(*Individual — Joint Tenants — Tenants in Common.)

CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 of 1969

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.

A certain parcel of land situated in Acton, Middlesex County, Massachusetts, being shown as Lot 4A on a plan entitled, "Plan of Land in Acton, Mass. (Williamsburg Park)" owned by: Marwin H. Craig, Scale: 1" = 60 feet, September 7, 1965, Everett M. Brooks Co., Civil Engineers, Newtonville, Wayland, W. Acton, Massachusetts, recorded with the Middlesex South District Registry of Deeds in Book 10966, Page End, being bounded and described as follows:

SOUTHWESTERLY	by Craig Road, as shown on said plan, one hundred twenty-five and 00/100 (125.00) feet;
NORTHWESTERLY	by Lot 5, as shown on said plan, three hundred eleven and 16/100 (311.16) feet;
NORTHEASTERLY	by land of The Commonwealth of Massachusetts, as shown on said plan, by two courses measuring respectively, seventy and 00/100 (70.00) feet and seventy-five and 49/100 (75.49) feet; and
SOUTHEASTERLY	by Lot 3A, as shown on said plan, two hundred eighty-six and 74/100 (286.74) feet.

Said Lot 4A containing 46,814 square feet of land, according to said plan.

Said premises are conveyed subject to and with the benefit of easements, rights, restrictions and agreements of record, if any there be, insofar as the same are now in force and applicable.

For title reference see deed from Marwin H. Craig to the grantor dated December 17, 1986, recorded with said Deeds at Book 17683, Page 514.

B 18607 P 282

2-H

JACQUELINE A. PALMER, CRAIG PALMER and LEONARD N. PALMER doing business as PALMER REALTY COMPANY

of Middlesex County, Massachusetts,

in consideration of Seventy-Seven Thousand Three Hundred Eighteen ($77,318.00) Dollars

grant to CRAIG PALMER, LEONARD N. PALMER doing business as PALMER REALTY COMPANY

of Craig Road, Acton, MA

with ~~quitclaim covenants~~

~~the condition~~

A certain parcel of land in Acton, Middlesex County, Massachusetts, being shown as Lot 6A on a plan entitled "Plan of Land in Acton, Mass., owned by: Merwin H. Craig," dated June 29, 1968, by Acton Survey & Engineering, Inc., recorded in Book 11614, Page 196, being bounded and described as follows:

SOUTHEASTERLY:	by Craig Road, as shown on said plan, by two (2) courses measuring one hundred six and 61/100 (106.61) feet and two hundred fourteen and 02/100 feet, respectively;
NORTHWESTERLY:	by Lot 7A as shown on said plan, by two (2) courses measuring seventeen and 58/100 (17.58) feet and three hnndred thirteen and 64/100 (313.64) feet, respectively;
SOUTHWESTERLY:	by Lot 7A as shown on said plan, ten (10.00) feet;
NORTHERLY:	by land of Commonwealth of Mssachusetts, as shown on said plan, one hundred sixty three (163.00) feet;
NORTHEASTERLY:	by land of Commonwealth of Massachusetts, as shown on said plan, two hundred seventy five and 39/100 (275.39) feet; and
SOUTHEASTERLY:	by Lot 4A as shown on said plan, three hundred eleven and 16/100 (311.16) feet.

Containing 119,267 square feet, all as shown on said plan. Subject to and with the benefit of "Restrictions for 'Williamsburg Park', Acton, Massachusetts" contained in deed from Suffolk Storage Warehouse, Inc., to Arthur R. McLaren, et ux dated April 13, 1966, and recorded with Middlesex South District Deeds in Book 11102, Page 140. Subject to the drain easement as shown on said plan, Said premises are conveyed with the right to use Craig Road, in common with all others entitled thereto, for all purposes for which streets and ways are commonly used in the Town of Acton.

Being the same premises conveyed to me by deed of Aubrey E. Jones, Trustee of Mel-Web Realty Trust, dated January 6, 1986 and recorded at Middlesex South Registry of Deeds in Book 16693, Page 589.

Property address: Lot 6A Acton, MA (Craig Road)

B 18607 P 283

Executed as a sealed instrument this 8th day of October 1987

JACQUELINE A. PALMER

LEONARD N. PALMER

CRAIG PALMER

The Commonwealth of Massachusetts

Middlesex ss. October 8, 1987

Then personally appeared the above named JACQUELINE A. PALMER, CRAIG PALMER and LEONARD N. PALMER

and acknowledged the foregoing instrument to be their free act and deed,

Before me, Notary Public — Justice of the Peace

My commission expires Aug 22 1992

CANCELLED

176.80

B

TOWN OF ACTON
TOWN HALL
472 MAIN STREET
ACTON, MASSACHUSETTS 01720
TELEPHONE (617) 263-8200

June 19, 1984

RECEIVED & FILED
DATE 6/20/84
Lydia N. Lesure etc
TOWN CLERK, ACTON

Palmer Realty Company
55 Domino Drive
Concord, MA 01742

RE: SITE DEVELOPMENT PLAN #4/13/84-243, PALMER REALTY COMPANY
7 CRAIG ROAD, ACTON

Gentlemen:

Under the provisions of Section VII of the Zoning Bylaw of the Town of Acton, the Board of Selectmen, at its regular meeting held on June 19, 1984, voted to approve Site Development Plan #4/13/84-243 for Palmer Realty Company, (1) Plan of Land in Acton owned by Aubrey E. Jones Trust, 30 Colpitts Road, Weston, MA 02193, "Approval under the subdivision control law not required", signed by the Acton Planning Board on July 22, 1968, (2) Landscaping Plan by New England Landscaper, (3) Site Plan, Proposed Storage Warehouse, (4) First Floor Plan, (5) Elevations, (6) Wall Sections, (7) Foundation Plan, (8) Mezzanine Framing Plan, (9) Framing Plan, (10) Typ. Details & General Notes, (11) Plumbing, (12) Drawing A-1, (13) Drawing A-2, (14) Drawing S-1, (15) Drawing S-2, (16) Site Plan of Land in Acton, all by Acton Survey & Engineering, 277 Central Street, Acton, Mass., dated January 12, 1984, revised April 10, 1984, submitted to this office on April 13, 1984 by Acton Survey & Engineering, and all known as Site Development Plan #4/13/84-243 subject to the following conditions:

1. Prior to the issuance of a building permit or the start of any work for this addition, the petitioner shall submit a revised site plan to the Building Commissioner for written approval. Said revised plan shall incorporate the following corrections, revisions or added information:

   a. Exposed concrete block exterior walls shall be finish painted, consistent with existing painted exterior walls.

   b. Petitioner shall consult with the Superintendent of Buildings and Grounds regarding additional landscaping to reduce the visual impact of the proposed construction on abutting property along the northwesterly lot line. Petitioner shall obtain the written approval of the Superintendent of Buildings and Grounds and said approved additional landscaping shall be incorporated into the approved site plan and installed prior to occupancy of the proposed addition.

a. In lieu of proposed 4' wide paved waterway adjacent to Nuclear Metals, build up grading to provide an earth berm along the entire length of northwesterly side of new driveway in order to direct storm water into existing catch basin on Craig Road.

b. Install a catchbasin at the easterly rounding of the new entrance.

c. In order to comply with the requirements of the recently adopted zoning bylaw, petitioner is directed to Section 10.4 "Site Plan Special Permit". Specific requirements of the new bylaw which have not been adequately addressed in this submission and must be addressed in the revised site plan include, but are not limited to, the following:

1. (10.4.3.1) Provide a written statement detailing the proposed use including the type of storage anticipated. Existing uses should also be stated clearly. Petitioner is hereby cautioned that changes in use may generate zoning or other violations. Any future changes or additions of uses should be checked carefully to assure compliance with all applicable requirements.

2. (10.4.3.2) Wetland buffer zone must be delineated on the site plan. Under this paragraph, the limits of open storage areas (where appropriate) must be shown. Petitioner is cautioned that open or outdoor storage is prohibited in the Light Industrial District (Section 3.7.2).

3. (10.4.3.3) Landscape plan should be stamped by a Registered Landscape Architect. Existing (to remain) and proposed landscape features should be clearly indicated along with outdoor lighting facilities and existing and proposed contours on 2 foot intervals (maximum).

4. (10.4.3.4) Building floor plan should include a tabular summary of the floor area used to calculate the required parking and the existing and proposed uses conducted on each floor should be noted.

5. (10.4.6.1) Submit calculations and evaluation of rate of storm water runoff with respect to limitations of this paragraph.

6. (10.4.6.2) Submit design information and evaluation of proposed outdoor lighting facilities to indicate intended method of compliance with the minimum standards of this paragraph.

7. (10.4.6.4) Provide a line of large deciduous or coniferous nursery grown trees, 2" - 2 1/2" in diameter, at approximately 50 feet on-center along the northeasterly side of the property (facing Route 2).

d. Due to the parking allocations and computations for this site, there shall at no time be more than fifteen (15) employees (total computation for all tenants combined) on the site.

✓ 2. Obtain all approvals necessary from the Board of Health. ✓

✓ 3. Obtain all approvals necessary under the Wetlands Protection Act and the local wetlands bylaw.

✓ 4. All abandoned wells shall be covered.

5. There shall be no further subdivision or development of the site without further site plan approval.

6. All development of the site must be in accordance with plans as approved by this decision and with the Bylaws of the Town of Acton.

7. No approval of any indicated signs or advertising devices is implied.

(8.) Any changes in this plan shall be approved in writing by the Board of Selectmen prior to actual construction. Upon completion of the project, an as built plan shall be submitted to the Board of Selectmen for written approval and to the Building Commissioner.

(9) No building or structure authorized by this site plan shall be occupied or used and no activity authorized to be constructed upon the land which is the concern of this site plan approval shall be commenced until a Certificate of Compliance as specified in Section XIII of the Zoning Bylaw has been issued.

(10) There shall be no storage of chemicals anywhere on the site unless they are registered with the Board of Health (in a form suitable to the Board of Health) and confined within a controlled area(s) acceptable to the Board of Health. Said area(s) shall be designed to prevent penetration of chemicals into the groundwater

in the event of an accident or spill. Any registration of chemicals with the Board of Health shall include a plan by the petitioner, acceptable to the Board of Health which clearly specifies (1) how and when the Board of Health will be notified if any accidents or spills occur, and (2) proposed method of clean up and disposal.

(11) Petitioner shall annually submit (on the anniversary of this decision) an affidavit to the Board of Selectmen that the applicable conditions of paragraph #10 above are being met or that no chemical storage is taking place on the site. Failure of the petitioner to comply with this requirement shall constitute an immediate and complete revocation of this Site Plan Special Permit.

12. The conditions of this site development plan approval shall be carried into effect and completed by the applicant by June 5, 1984 and prior to issuance of the occupancy permit.

Very truly yours,
BOARD OF SELECTMEN

by: Donald R. Gilberti
Donald R. Gilberti
Chairman

JO/acs
cc: Town Clerk
Planning Board
Conservation Commission
Board of Health
Fire Department
Board of Assessors
Town Engineer
Water District of Acton
Building Commissioner

3126B

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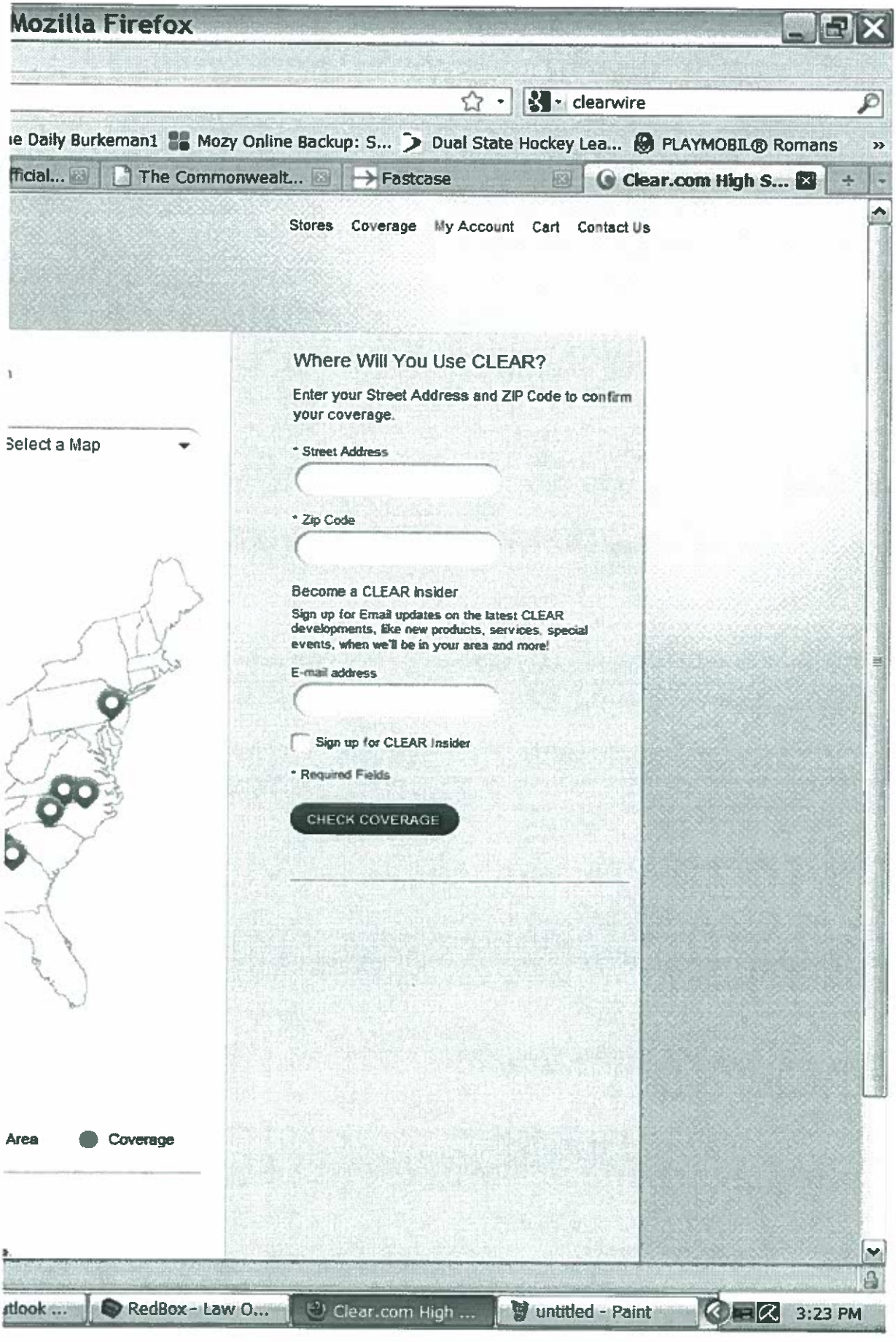
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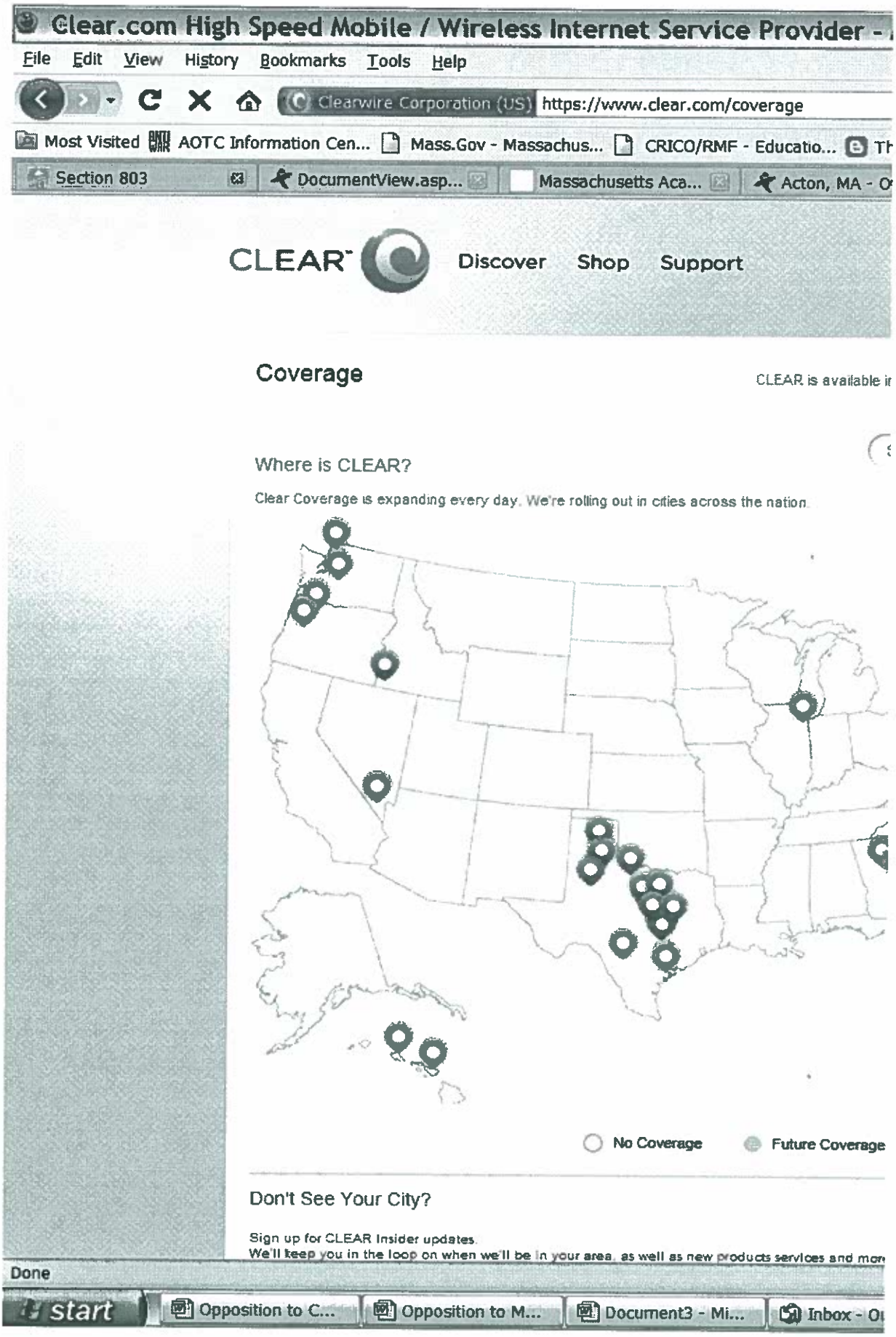
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Clearwire talking wholesale to satellite, telcos

LAS VEGAS (Reuters) - Clearwire Corp is in talks with satellite, telecom and consumer electronics companies about using its WiMax high-speed wireless network, seeking wider adoption of an emerging technology in which it is investing heavily.

Sinead Carew
LAS VEGAS
Thu Jan 7, 2010 6:49pm EST

TECHNOLOGY | MEDIA

Chief Executive Bill Morrow told Reuters on Thursday that the upstart operator founded by wireless pioneer Craig McCaw is keen on selling space on its small but expanding WiMax network wholesale to other network service providers, though he would not say which he was in discussions with.

Companies like Deutsche Telekom's T-Mobile USA, or other wireless providers such as Leap Wireless and MetroPCS Communications, could make sense as wholesale clients, Morrow said.

"They're prospects for us that potentially could use our network," Morrow told Reuters in an interview on Thursday at the Consumer Electronics Show, an annual gadgetfest, in Las Vegas.

WiMax is used by a minority of people for wireless Internet connections to mobile computers or smaller devices dedicated to Web surfing. Morrow said he expects to offer Clearwire's first smartphones toward the end of this year.

The company wants to blanket entire cities with the technology to eventually provide Web links to many electronic devices, ranging from cameras to music players.

Morrow gave no timeframe for any potential deals. His comments follow speculation last year that T-Mobile USA, the No. 4 U.S. mobile service, was eyeing Clearwire's wireless airwaves to help it develop its own next-generation offerings.

Clearwire's owners include Sprint Nextel, which has a roughly 55 percent stake, and some of the biggest U.S. cable operators, Comcast Corp and Time Warner Cable. These companies use Clearwire's network to offer services.

Clearwire is still in the early stages of building its network. But its large holdings of U.S. wireless airwaves licenses could make it a good choice for any company looking to cut costs by renting network space instead of building it, Morrow said.

"If I go after another telco company, I can say I can do it cheaper for you," the executive said. "We're definitely having discussions with cable companies, satellite companies, smaller telco companies and consumer electronics companies."

COMPETITION?

One hurdle to wholesale deals could be the fact that many big service providers around the world are basing their next generation service plans on another wireless technology: Long Term Evolution (LTE), a rival standard to WiMax.

But Morrow said Clearwire could easily add LTE technology to its network if the need arises. He said such an upgrade would be cheaper and less complex than building a new network because WiMax and LTE technologies have some similarities.

Another reason for adding LTE to the network could be to support devices that support LTE and not WiMax. But Morrow said it is not certain this will be necessary.

"We will (build LTE) if the LTE ecosystem has bypassed WiMax. I don't think that will occur before 2012. It's not a foregone conclusion," he said.

Clearwire has so far built its WiMax network in markets with a total population of 30 million. Its 2010 expansion plan is to cover markets with 120 million people, including San Francisco, New York and Washington, D.C.

It recently raised $2.8 billion to support its network build-out. Clearwire estimates that each market will break even about 18 months after its launch, meaning that markets entered later this year could break even sometime in 2012.

Morrow said Clearwire will fund the next phase of its network expansion, after this year, with cash from operations, as it has no plans to raise additional funding. However, he said this could change.

The company plans to build a nationwide network over time, but has not yet decided the pace beyond 2010, he said.

(Editing by Edwin Chan and Richard Chang)

TECHNOLOGY MEDIA

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Acton, MA - Cell Phone Towers

Browse where towers are located in Acton, MA. When zoomed out, only a select number of towers are shown to speed up the loading process. To see a more complete picture, please zoom in.

The FCC does not require every antenna structure to be registered, and the map may or may not list all the towers in the area. Additionally, many carriers have sold their tower assets to third party companies, and leasing agreements are unknown. If this is the case, the best way to determine carrier coverage is by reading comments in the local area.

Carrier	Coverage Maps
AT&T Towers	Map
Nextel Towers	Map
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Comments **Towers**

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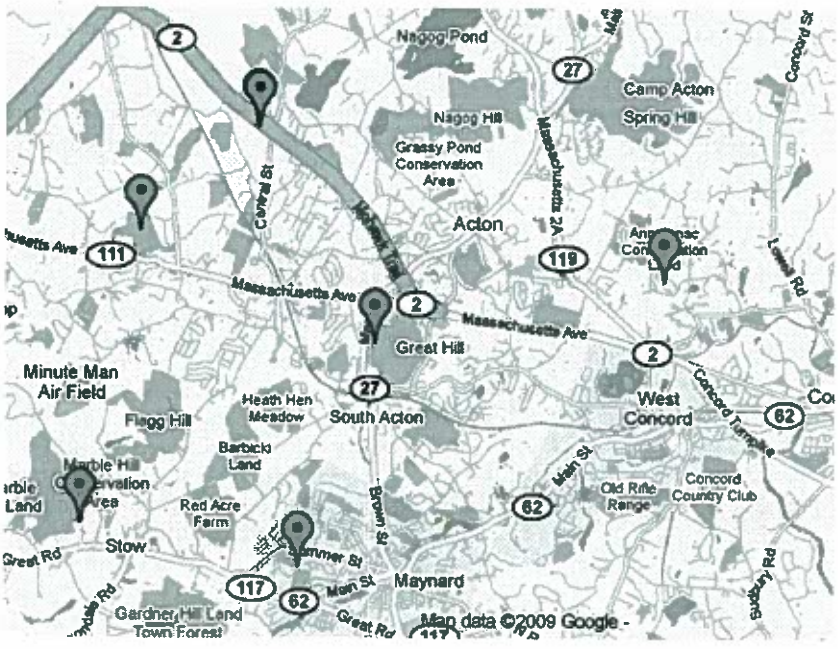

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View

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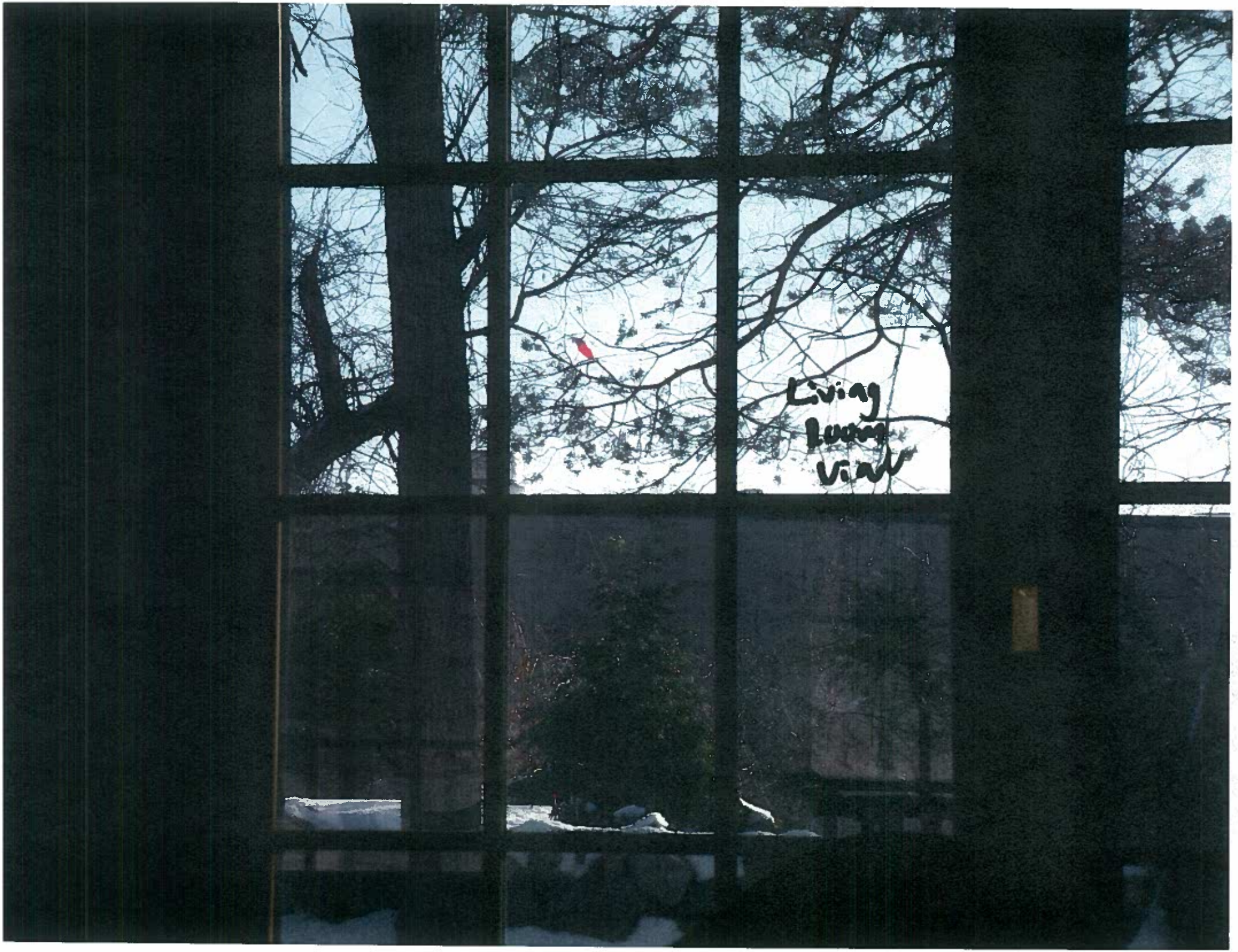
Driveway View

Garden View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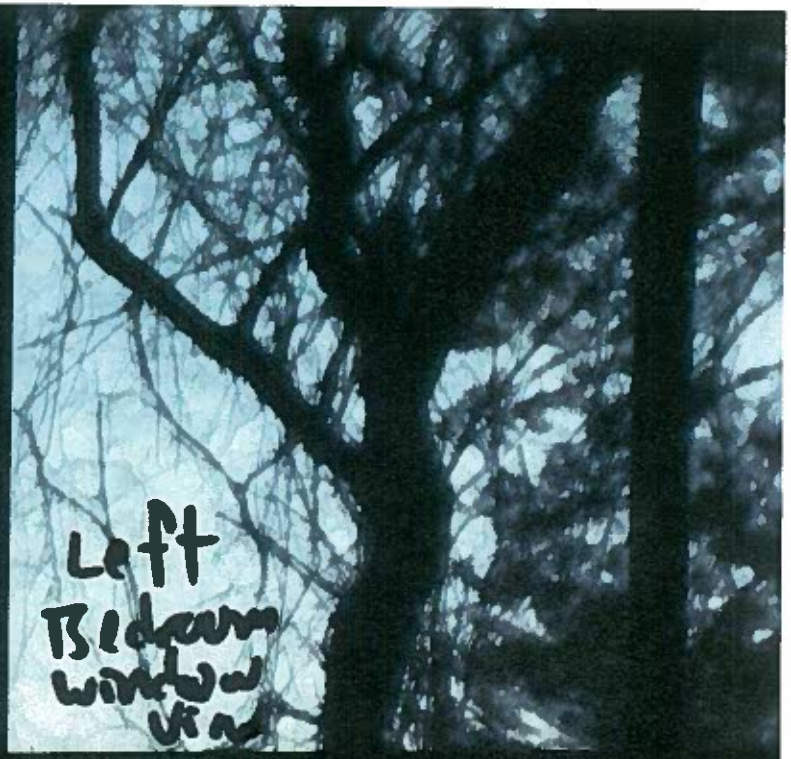
Left
Bedroom
window


VIEW